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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

STATE OF MISSOURI, *et al.*,
Petitioners,

v.

CRATON LIDDELL, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

REPLY OF RESPONDENTS BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, ET AL., TO PETITIONERS' SUPPLEMENTAL BRIEF

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On September 16, 1981, Petitioners filed a "Supplemental Brief" ("Pet. Supp. Br.") to "advise the Court of events which have occurred since the filing of petitioners' petition," Pet. Supp. Br., at 1, and Petitioners have raised certain additional arguments based upon their view of those new developments. Respondents The Board of Education of the City of St. Louis, Missouri, *et al.* ("City Board"), have already responded in their

Brief in Opposition to most of Petitioners' points, and we will not repeat those arguments here. However, since Petitioners' Supplemental Brief mischaracterizes the recent orders of the court below and the procedural posture of this case, we submit this short reply.

1. Petitioners argue that the District Court's July 2, 1981, Order somehow contradicts the City Board's argument that the purely procedural provisions of paragraph 12(a) of the District Court's May 21, 1980, Order do not warrant review. *See* City Board Brief in Opposition, at 12. Petitioners acknowledge that they have appealed the July 2, 1981, Order to the Eighth Circuit, Pet. Supp. Br., at 3, but they wholly fail to explain how the existence of the July 2 Order makes the District Court's earlier order, which is the subject of the instant Petition, worthy of review.

As the City Board has noted, paragraph 12(a) of the May 21, 1980, Order "imposed no obligations on petitioners other than the requirement that they draft a proposed plan. Thus, at this stage, and in this Court, Petitioners' challenges to paragraph 12(a) are entirely premature, and do not warrant review." City Board Brief in Opposition, at 12 (footnote omitted). Now that the District Court in fact has entered an order based on one of the plans proposed by the parties, it is even clearer that Petitioners' real objection is to the terms of the Order entered on July 2, 1981, not to the Court's May 21, 1980, Order which simply required submission of proposed plans. Moreover, the City Board has previously demonstrated that both paragraph 12(a) of the May 21, 1980, Order and the subsequent Order of July 2, 1981, contemplate purely voluntary transfers of students, and thus Petitioners' objections are wholly misplaced. City Board Brief in Opposition, at 10-14. In any event, since the July 2, 1981, Order is not now before this Court for review, Petitioners' arguments concerning that

Order are irrelevant here, and should be addressed in the first instance to the court of appeals.[1]

2. Petitioners rely upon the District Court's August 24, 1981, Orders to continue to suggest that the trial court intends by means of the paragraph 12(c) process to order a mandatory inter-district desegregation plan against suburban school districts not found to have been involved in an inter-district violation. Pet. Supp. Br., at 5-6. Petitioners have mischaracterized the trial court's orders for the purpose of suggesting incorrectly that this case presents an issue under *Milliken* v. *Bradley*, 418 U.S. 717 (1974) (*"Milliken I"*).

As we noted previously, the District Court has made clear that no suburban school district will be ordered to participate in any inter-district remedy unless and until it is found to be involved in an inter-district constitutional violation within the meaning of *Milliken I*. *See* City Board Brief in Opposition, at 15 & n.16. There is no basis for Petitioners' suggestion that the trial court now intends to proceed in a different fashion. In its August 24, 1981, Order, the District Court granted in part motions filed by the City Board and the Caldwell Plaintiff-Intervenors to file inter-district pleadings and made 17 of the 23 school districts in St. Louis County defendants. The Court ordered discovery completed within 90 days, and scheduled a hearing on March 1, 1982, on the "12(c) aspects" of this cause. Pet. Supp. Br. at A-46. Those "aspects" involve both paragraph

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[1] Contrary to the suggestion of the Petitioners, *see* Pet. Supp. Br., at 4, the court of appeals has not approved the "enforcement" of paragraph 12(a), or any other aspect of the July 2, 1981, Order. The Eighth Circuit simply approved the District Court's May 21, 1980, Order, including paragraph 12(a), which called for the submission of proposed plans; the appellate court has not to date considered the merits of any proposed plan submitted by the parties or ordered by the District Court pursuant to paragraph 12(a).

12(c) itself and the inter-district allegations contained in the amended pleadings filed by the City Board and the Caldwell Plaintiffs-Intervenors. Moreover, in its August 24, 1981, Order, the Court made it clear that it intends to hear evidence at that time on "both alleged constitutional violations and proposed remedies." *Id.* Thus, despite Petitioners' out-of-context citation to certain elements of the judge's Order, it is clear that the Court has reactivated the paragraph 12(c) requirement in order to allow for the submission of proposed remedial orders in time for the March 1, 1982, hearing on the merits.

As with their paragraph 12(a) arguments, Petitioners' objections to paragraph 12(c) totally confuse the distinction between requiring the drafting of a proposed plan, and requiring implementation of a plan. Nothing in *Milliken I*, or any other legal precedent, suggests that a court cannot require parties to draft their proposed orders prior to trial, so that the court can try liability and remedy issues at the same time.

Moreover, as the City Board emphasized repeatedly in its earlier Brief in Opposition, there is absolutely no dispute among the parties here about the fact that "no [inter-district] relief would be proper absent a finding of an interdistrict violation, or an intradistrict violation with interdistrict effects, as required by *Milliken I*." *See* City Board Brief in Opposition, at 10 n.10.[2] The United States and the Caldwell Plaintiffs-Intervenors have stressed the same point. *See* Brief of the United States in Opposition, at 16; Brief in Opposition of Respondents,

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[2] *Accord*, City Board Brief in Opposition, at 12-13 n.13 ("suburban districts cannot be required to participate in any interdistrict remedy unless they are made parties to a case that meets the standards set forth in *Milliken I*"); *id.* at 15 (paragraph 12(c) "neither called for nor contemplated implementation of [an interdistrict] plan prior to further evidentiary proceedings").

Earline Caldwell, *et al.*, at 17. Thus, Petitioners' suggestion that the recent orders raise an issue under *Milliken I* simply misstates the action taken by the court and the positions asserted by the parties.

3. Finally, Petitioners argue that "it is patently improper (particularly when the defendants are governmental entities) for a court to put its stamp of approval on any particular dollar amount to achieve [a remedy] or to require the funds to come from any particular public source." Pet. Supp. Br., at 9-10. This argument is simply incomprehensible; Petitioners do not refer to any court order in this case similar to the one they describe and attack, and in fact no such order exists.

It is true that the City Board, like the Petitioners, has been ordered by the District Court to implement an intradistrict remedial plan, and to pay half the expenses required for such a plan. *See Liddell* v. *Board of Education*, 491 F. Supp. 351, 352-53 (E.D. Mo. 1980). There is absolutely nothing in any order entered in this case, however, which suggests the "particular public source" for these costs, or which tells the State, the City Board, or any other party "where to get the money," as suggested by Petitioners. Pet. Supp. Br., at 10. The trial court has simply followed the eminently reasonable approach of approving a budget (based on submissions by the parties) specifying the *maximum* costs for the precise remedy ordered by the Court. It should be emphasized, however, that nothing in the Court's orders requires the Petitioners or the City Board to spend the full amount in the budget *if* the ends can be accomplished for a lesser cost. The budget simply gives the parties the helpful guidance of precise dollar maximums for each year with regard to the anticipated cost of enforcing the Court's Order. Since Petitioners have been held to be "primary constitutional wrongdoers," 491 F. Supp. at 359, they of course can be required to pay whatever costs are reason-

ably required to remedy their wrongs. The Petitioners hardly should be heard to complain because the District Court *limited* their liability to a maximum cost.

CONCLUSION

For the foregoing reasons, and for those set forth in their earlier Brief in Opposition, Respondents The Board of Education of the City of St. Louis, Missouri, *et al.*, respectfully urge this Court to deny the instant Petition for a Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the following Reply of Respondents Board of Education of the City of St. Louis, *et al.*, to Petitioners' Supplemental Brief, were mailed, postage prepaid, this 23rd day of September, 1981 to:

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